

REMARKS

Claims 1-15 are presently pending and stand rejected. Assignee respectfully requests pre-appeal brief review of certain rejections in the final office action of May 6, 2008.

Claims 1-15 were provisionally rejected on grounds of non-statutory obviousness-type double patenting over claims 1-15 of copending Application No. 10/803,420. Since the conflicting claims have not in fact been patented, the rejection is provisional.

Assignee respectfully traverses this rejection and calls Examiner's attention to the fact that claims 1-10 of copending application no. 10/803,420 recite, themselves or through dependency, "skipping frames at a rate according to a desired playback speed", and claims 11-15 recite, themselves or through dependency, "at least one controller configured to skip frames at a rate according to a desired playback speed". In contrast, claims 1-10, of the current application recite, themselves or through dependency, "generating replicated frames for playback at a desired rate, wherein said replicated frames comprise the frames of the original audio signal, wherein at least some of the frames of the original audio signal are repeated", and claims 11-15 recites, "the at least one controller capable of generating replicated frames for playback at a desired rate, wherein said replicated frames comprise the frames of the original audio signal, wherein at least some of the frames of the original audio signal are repeated". For at least for the foregoing reasons, claims 1-15 are patentably distinctly from claims 1-15 of copending application '420.

Claims 1, 6 and 11 were rejected under 35 U.S.C. § 103(a) as being obvious from Fukumoto in view of Fukumoto admitted prior art. Claims 1, 6, and 11 to recite, among other limitations "generating replicated frames for playback at a desired rate, wherein said replicated frames comprise the frames of the original audio signal, wherein at least some of the frames of the original audio signal are repeated".

Examiner has indicated that Fukumoto "fails to disclose wherein said replicated frames comprise the frames of the original audio signal, wherein at least some of the frames of the original audio signal are repeated. However, FAPA does (para 0027)." Examiner has indicated that "Taking the combine teachings of Fukumoto and FAPA as a whole, one skill in the art would have found it obvious to modify the method ... wherein at least some of the frames of the original audio signal are repeated as taught in FAPA (para 0027) to suppress noise due to discontinuity in the audio signal."

Assignee respectfully traverses the rejection because Fukumoto teaches away from the combination proposed by Examiner.

Although Examiner has indicated that "one skilled in the art would have found it obvious to modify ... to suppress noise due to discontinuity in the audio signal", Fukumoto also notes that the "convention variable-speed reproducing apparatus described above has the following three disadvantages: [0032] The first disadvantage lies in the sampling repeater 8 for cross-fade processing over consecutive repeated outputs for high-quality sound variable-speed reproduction. The cross-fade processing causes bulk circuitry or software, which results in

increase in manufacturing cost, operational delay, etc.

[0033] The second disadvantage lies in large storage capacity. In detail, a large capacity memory is required for temporarily storing audio signals for several hundred milliseconds. This is because output repetition should be performed per several hundred milliseconds in high-quality (1/N.times. speed)-reproduction. Such a large capacity memory also increases costs for manufacturing variable-speed reproducing apparatus.

[0034] The third disadvantage lies in difficulty in all-time stable high-quality sound variable-speed reproduction. For example, music and speeches are different from each other in optimum interval for output decimation and repetition. This causes unlistenable speeches when played back with music at output-decimation and repetition intervals optimum for music. Such unlistenable output cannot fulfill the requirement for sound quality relatively high even in variable-speed reproduction."

"If the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. 103, the examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant." MPEP 2142. "When an applicant submits evidence, whether in the specification as originally filed or in reply to a rejection, the examiner must reconsider the patentability of the claimed invention. The decision on patentability must be made based upon consideration of all the evidence, including the evidence submitted by the examiner and the evidence submitted by the applicant. A decision to make or maintain a rejection in

the face of all the evidence must show that it was based on the totality of the evidence. Facts established by rebuttal evidence must be evaluated along with the facts on which the conclusion of obviousness was reached, not against the conclusion itself. *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990)." Id.

Assignee respectfully submits that in view of all the evidence presented, one skilled in the art would have not found obvious the combination proposed by Examiner, notwithstanding "to suppress noise due to discontinuity in the audio signal".

Accordingly, Assignee respectfully requests that the rejection to claims 1, 6, and 11 under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

It is believed that all monies for the actions described herein are provided with this correspondence. To the extent that additional monies are required for any of the actions requested in the correspondence, Commissioner is authorized to charge such fees and credit any overpayments to deposit account 13-0017.

Respectfully Submitted



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